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November 30, 1990

NOV 30 1990

Ihor N. Boyko, Esq.  
Office of Legal Counsel  
Indiana Department of  
Environmental Management  
105 South Meridian Street  
Indianapolis, IN 46206

US EPA RECORDS CENTER REGION 5



435318

Re: Commissioner, Indiana Department of Environmental  
Management v. Gary Development Company, Inc.  
Cause No. 90-W-J-428

Dear Mr. Boyko:

You will find with this letter copies of Gary Development Company's First Request for Production of Documents and First Set of Interrogatories to the Complainant. I am requesting that the documents be produced on or before Friday morning, December 28, 1990; and the Answers to the Interrogatories by the Commissioner are due by Monday, December 31, 1990. Compliance with the Trial Rule timetables should allow me to review these documents and the Commissioner's answers before the taking of depositions.

I would like to take the deposition of IDEM staff member Steve Shaffer on January 3, 4 or 7. I would anticipate this would take no longer than three hours. On the day following this deposition, I would like to take the deposition of Commissioner Prosser. Please advise at your earliest opportunity as to acceptable dates and times. I believe this is preferable to me filing a formal notice of deposition for a date inconvenient to you or the witnesses.

Very truly yours,

PARR RICHEY OBREMSKEY & MORTON

By

WDK/eu

Enclosures

STATE OF INDIANA       )  
                              ) SS:  
COUNTY OF MARION       )

BEFORE THE INDIANA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

ECEL

COMMISSIONER, INDIANA DEPARTMENT       )  
OF ENVIRONMENTAL MANAGEMENT,        )

NOV 30 1990

Complainant,        )

OFFICE OF HEARINGS  
INDIANA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

v.        )

CAUSE NO. 90-W-J-428  
(B-1357)

GARY DEVELOPMENT COMPANY, INC.,        )

Respondent.        )

RESPONDENT'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO THE COMPLAINANT

Respondent Gary Development Company, Inc. ("GDC") by counsel, and pursuant to Trial Rule 34 of the Indiana Rules of Civil Procedure, requests that the Complainant herein either produce by providing copies to its counsel of record or by permitting its counsel to inspect and copy the following documents on or before 9:00 a.m. at December 28, 1990, at the offices of the Indiana Department of Environmental Management, the Chesapeake Building, Indianapolis, Indiana:

I.

Definitions

The term "document" or "documents" refers to all written or graphic matter and all copies containing any additional matter, however produced and reproduced, of every kind and description in your actual or constructive possession, custody, care or control, including, but not limited to: originals (or copies where originals are unavailable) of correspondence, books, pamphlets, periodicals, accounts, letter, objects, telegrams, notes or sound

recordings or other memorials of any type of personal or telephone communications, conversations, meetings or conferences. (including, without limitation, telephone bills and long-distance telephone call charge slips), minutes of board, agency, division or committee meetings, memoranda, interoffice and intraoffice communications, records, reports, studies, written forecasts, projections, analyses, estimates, contracts, licenses, agreements, invoices, ledgers, books of account, journals, vouchers, account reports, expense reports, receipts, statements, summaries, papers, including working papers, drafts (including alterations, modifications, changes and amendments), statistical records, costs sheets, stenographers notebooks, calendars, appointment books, diaries, time sheets, processing cards and tape and computer printouts, graphic or aural records or representations of any kind (including without limitation, photographs, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical or electric records or representations of any kind (including without limitation, tapes, cassettes, discs and recordings).

## II.

### Documents to be Produced

1. Any and all documents which discuss observations made by or information held by any employee, official or agent of the Commissioner or of the Indiana Department of Environmental Management ("IDEM") as to any events alleged in the

Commissioner's Findings of Fact in the Emergency Order in Cause No. B-1357 issued on October 16, 1990, including, but not limited to, the alleged "discharging leachate water" from GDC's facility "to receiving waters named the Grand Calumet River on or about August 1, 1990," and until the issuance of the Emergency Order on October 16, 1990.

2. Any and all documents which report that taking of any samples of leachate on or from GDC's facility and/or the taking of any samples of water from the Grand Calumet River near GDC's facility between August 1, 1990, and the issuance of the Emergency Order on October 16, 1990.

3. Any and all documents reporting the analytical procedure, analytical chemical results, the quality control and the quality assurance as to any samples of leachate taken from GDC's facility and/or samples of waters taken from the Grand Calumet River near GDC's facility between August 1, 1990, and the issuance of the Emergency Order on October 16, 1990.

4. All documents which the Complainant intends to use or contemplates using as evidence to support the Findings and allegations set forth in the Commissioner's Emergency Order of October 16, 1990.

5. All documents which are in the possession or control of the Commissioner of the Indiana Department of Environmental Management ("IDEM") which set forth or may establish the levels of specific chemical substances or parameters which the Commissioner or IDEM believe must be analyzed for in a liquid to

determine whether or not it constitutes "leachate" as set forth in the Emergency Order.

6. All documents which are in the possession or control of the Commissioner or the Indiana Department of Environmental Management which discuss or relate to the Commissioner's or IDEM's processing of or consideration of the Notice Suspending Operations and Petition for Variance filed by Respondent GDC on August 29, 1989, with the Commissioner.

7. All documents possessed by or controlled by the Commissioner or the IDEM which discuss or relate to the Commissioner's or IDEM's processing or consideration of GDC's renewal application for a sanitary landfill operating permit filed with the Indiana Environmental Management Board during approximately February, 1985.

8. All documents possessed by or controlled by the Commissioner or the IDEM which discuss or relate to the consideration or review by the Commissioner, the IDEM or the Indiana Environmental Management Board ("IEMB") or their staffs of the ATEC Report of Soil Borings and Permeabilities submitted to the IEMB at its meeting on November 15, 1985, to the IEMB Hearing Officer in Cause No. N-146 on June 5, 1986, and to the IDEM Commissioner on August 29, 1989, regarding the acceptability of the GDC site's west wall pursuant to the terms of the

Settlement Agreement in Cause No. N-53 approved by the Indiana Environmental Management Board on February 28, 1983.

PARR RICHEY OBREMSKEY & MORTON

Attorneys for Gary Development Company, Inc.

By   
Warren D. Krebs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Respondent's First Request for Production of Documents to the Complainant has been served upon the following by personal service on this 30 day of November, 1990:

Ihor N. Boyko  
Attorney  
Office of Legal Counsel  
Indiana Department of  
Environmental Management  
105 South Meridian Street  
Indianapolis, IN 46206

  
Warren D. Krebs

PARR RICHEY OBREMSKEY & MORTON  
121 Monument Circle  
Suite 500  
Indianapolis, IN 46204  
Telephone: (317) 269-2500

STATE OF INDIANA       )  
                              ) SS:  
COUNTY OF MARION       )

BEFORE THE INDIANA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

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COMMISSIONER, INDIANA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT,

Complainant,

v.

GARY DEVELOPMENT COMPANY, INC.,

Respondent.

NOV 30 1990

OFFICE OF HEARINGS  
A DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

CAUSE NO. 90-W-J-428  
(B-1357)

RESPONDENT'S FIRST SET OF  
INTERROGATORIES TO THE COMPLAINANT

I.

Comes now the Respondent Gary Development Company, Inc. ("GDC"), by counsel, and hereby submits the following interrogatories to the Complainant to be answered by her under oath, fully, positively and without evasion on or before thirty (30) days after the receipt by counsel for Complainant of a copy of these interrogatories pursuant to the Indiana Rules of Civil Procedure.

II.

Duties of Answering Party

Attention is drawn to the duties of the Answering Party which include the following:

A. In answering these interrogatories, the Answering Party shall furnish all requested information, not subject to a valid objection, that is known by, or available or accessible to the

Answering Party or any of its attorneys, consultants, representatives, staff members or other agents.

B. If the Answering party is unable to answer fully any one of these interrogatories, it must answer it to the fullest extent possible. An evasive or incomplete answer, if made in bad faith, is deemed to be a failure to answer under Trial Rule 37(A)(3).

C. If the Answering Party objects to an interrogatory or a sub-part thereof as calling for information which is beyond the scope of discovery (e.g., "not reasonably calculated to lead to the discovery of admissible evidence," "work product," "unduly burdensome," etc.) it must, nevertheless, answer the interrogatory or sub-part thereof to the extent that it is not objectionable.

D. The Answering Party must supplement or correct its responses to these interrogatories without being requested to do so (i) as to the information thereafter acquired which would be responsive to these interrogatories requesting the identification and location of persons having knowledge of discoverable matters, (ii) as to any response when it is discovered to have been incorrect when made or when it is discovered to be no longer true.

E. Under Trial Rule 33(B) an interrogatory, otherwise proper, is not objectionable because it involves an opinion, contention or legal conclusion.



### III.

#### Definitions

"Give the Details" is a request that when appropriate, the answer contains the details specified in paragraphs A through D below, including identification of all documents and oral communications relied upon or relevant thereto.

A. As to each course of action or conduct referred to, a statement of each act, event, transaction, occasion, incident, or matter claimed to be a part of the course of action or conduct, including:

1. The date, time and place when it occurred;
2. The identity of each person participating, and a statement of whom such person purported to represent; and
3. A statement of the subject matter.

B. As to each person referred to, a statement of his/her name, occupation, last known address, and last known employment.

C. As to each "document" mentioned or referred to in the answer, a statement of:

1. Its nature, i.e., contract, memorandum, report, recording, transcription, letter, etc.;
2. Its title, if any;
3. The date it was prepared;
4. The identity of each person who prepared it, participated in its preparation and/or signed it;
5. Its subject matter; and

6. The name and last known address of the person who presently has the custody of it.

D. As to each "oral communication" mentioned or referred to in the answer, a statement of:

1. The persons involved;
2. The date upon which it occurred;
3. Where it occurred, or if a telephone conversation, the place at which each person involved was located; and
4. What was said by each person involved.

#### IV.

**INTERROGATORY 1:** State your full name, age, address and official position with the Indiana Department of Environmental Management.

**ANSWER:**

**INTERROGATORY 2:** Give the details of, pursuant to the instructions above, of all observations made on or about August 1, 1990, by any employee, official or agent of the Complainant Commissioner or of the Indiana Department of

Environmental Management ("IDEM") at the facility owned and operated by GDC at Gary, Indiana, which may relate to any allegations set forth in the Complainant's Emergency Order or which are contemplated to be placed into evidence by the Complainant at the hearing now scheduled for January 28, 1991, herein.

**ANSWER:**

**INTERROGATORY 3:** Give the details, pursuant to the instructions above, of any sampling of leachate on or from GDC's facility and sampling of waters from the Grand Calumet River near

GDC's facility by any employee, official or agent of the Complainant Commissioner or IDEM between August 1, 1990, and the date of the Emergency Order on October 16, 1990.

**ANSWER:**

**INTERROGATORY 4:** Give the details, pursuant to the instructions above, of any chemical analysis for contaminants or other substances in leachate or waters collected from or on GDC's facility and waters collected from the Grand Calumet River by any employee, official or agent of the Complainant Commissioner or IDEM between August 1, 1990, and the issuance of the Emergency Order on October 16, 1990.

**ANSWER:**

**INTERROGATORY 5:** Describe all actions, either final or preliminary, by the Commissioner, the IDEM or the Indiana Environmental Management Board ("IEMB") taken regarding GDC's renewal application for a sanitary landfill operating permit submitted to the IEMB during approximately February, 1985. In the response give the details of any such actions or considerations pursuant to the instructions above.

**ANSWER:**

**INTERROGATORY 6:** Describe all actions, either final or preliminary, by the Commissioner, the IDEM or the IEMB which constitute a consideration of or discussion of the ATEC Report of Soil Borings submitted by GDC to the IEMB on November 15, 1985, to the IEMB Hearing Officer in Cause No. N-46 on June 5, 1986, and to the IDEM Commissioner on August 29, 1989, regarding the acceptability or non-acceptability of the permeability of the GDC's site's west wall as relates to the applicable provisions of the Settlement Agreement in Cause No. N-53 approved by the IEMB on February 28, 1983. When responding to this interrogatory,

give the details of any such actions or considerations pursuant to the instructions set forth above.

**ANSWER:**

**INTERROGATORY 7:** Describe all actions, either final or preliminary, by the Commissioner or the IDEM as to the processing of or consideration of the Petition for Variance filed by GDC's counsel with the Commissioner on August 29, 1989. When responding to this interrogatory, please give the details of any such consideration or actions pursuant to the instructions set forth above.

**ANSWER:**

INTERROGATORY 8: Give the details of why the Commissioner, the IDEM and the IEMB have never issued a determination on GDC's, renewal application for a sanitary landfill submitted to the IEMB during 1985.

ANSWER:

INTERROGATORY 9: Give the details of why the Commissioner, the IDEM and the IEMB have never responded to GDC or its representatives as to whether or not the ATEC Report of Soil Borings and Permeabilities submitted to the IEMB on November 15, 1985, and to the IDEM Commissioner on August 29, 1989, demonstrate that the permeability of the GDC site's west wall meets the provisions of the Settlement Agreement in Cause No. N-53 approved by the Indiana Environmental Management Board on February 28, 1983.

ANSWER:

INTERROGATORY 10: Give the details as to why the Commissioner has failed to issue a determination or to provide any response or comments to GDC or its counsel regarding the Petition for Variance filed by GDC with the Commissioner on August 29, 1989.

ANSWER:

INTERROGATORY 11: Is it the technical opinion of the Commissioner and/or the IDEM staff that the IEMB approved construction area at the GDC sanitary landfill which remains below the final elevation approved by the Indiana Environmental Management Board by its construction permit issued to GDC should not be maintained by pumping the water which collects in this lower area back onto the surrounding higher elevations of the



site and surrounding property? If so, please give the details forming the basis for this opinion.

**ANSWER:**

**INTERROGATORY 12:** If the Commissioner is contending in the Emergency Order, or will contend at the hearing, that waters at GDC's facility which have passed through or merged from solid waste have been discharged to the Grand Calumet River, please specify the exact locations at the GDC facility where such waters were observed to be passing through or merging from solid waste on or about August 1, 1990, or between that date and the issuance of the Emergency Order on October 16, 1990.

**ANSWER:**

**INTERROGATORY 13:** If the Complainant is contending by the Emergency Order, or will contend at the hearing, that waters collected on the GDC site on or about August 1, 1990, or between August 1, 1990, and October 19, 1990, were discharged to the Grand Calumet River and that such collected waters contained soluble, suspended, or miscible materials removed from solid waste, please specify the particular chemical substances or materials, and their respective levels, which were contained in those collected waters on or about August 1, 1990, or between August 1, 1990, and October 16, 1990.

**ANSWER:**

**INTERROGATORY 14:** Identify the name, position and business or office address of each person, including any experts, whom the Commissioner intends or may call at the hearing on the merits, and for each summarize the testimony expected to be elicited from each such witness, including the facts and opinions and grounds therefore held by any expert to be called.

**ANSWER:**

**INTERROGATORY 15:** Identify by title, date, author and subject matter any documents or writings which you contend is or might be relevant to a determination of the issues set forth in the Commissioner's Emergency Order, including, but not limited to, any documents which the Commissioner or its counsel intends to offer into evidence at the hearing.

**ANSWER:**

PARR RICHEY OBREMSKEY & MORTON

Attorneys for Gary Development  
Company, Inc.

By   
Warren D. Krebs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the fore-  
going Respondent's First Request Set of Interrogatories to the  
Complainant has been served upon the following by personal  
service on this 30 day of November, 1990:

Ihor N. Boyko  
Attorney  
Office of Legal Counsel  
Indiana Department of  
Environmental Management  
105 South Meridian Street  
Indianapolis, IN 46206

  
Warren D. Krebs

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